

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos. 05-O-00236-RAP; 05-O-00603;
)	05-O-03325 (Cons.)
KENNETH SIDNEY KLEEGER,)	
)	
Member No. 102763,)	DECISION AND ORDER SEALING
)	DOCUMENTS
A Member of the State Bar.)	
_____)	

I. Introduction

In this disciplinary proceeding, respondent **Kenneth Sidney Kleeger** stipulated to professional misconduct in three client matters, including failing to perform competently, failing to communicate, failing to promptly return client files, failing to provide an accounting, failing to maintain funds in a client trust account, committing an act of misappropriation with gross negligence and failing to cooperate with the State Bar.

Respondent has successfully completed the State Bar Court's Alternative Discipline Program (ADP). (Rules Proc. of State Bar, rules 800-807.) The court recommends that respondent be suspended from the practice of law for one year, that execution of such suspension be stayed, and that respondent be placed on probation for three years on the condition that he be actually suspended for 60 days. (Rules Proc. of State Bar, rule 803.)¹

¹References to rule are to the Rules of Procedure of the State Bar, unless otherwise noted.

II. Significant Procedural History

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed three Notices of Disciplinary Charges (NDC) against respondent on:

- May 26, 2005 (case No. 05-O-00236);
- July 6, 2005 (case No. 05-O-00603); and
- January 2, 2007 (case No. 05-O-03325).

In 2005 respondent sought to participate in the State Bar's Lawyer Assistance Program (LAP). On July 13, 2006, respondent executed a Participation Agreement with the LAP.

On May 5, 2006, respondent submitted an amended declaration to the court which established that at the time of his misconduct, he was suffering from mental health issues. In March 2007, respondent executed a stipulation regarding facts and conclusions of law in this matter. Respondent's declaration and the stipulated facts establish a causal connection between respondent's mental health issues and the misconduct found in this disciplinary proceeding. As such, the court found that respondent had adequately established a nexus between his mental health issues and his misconduct in this matter, i.e., that his mental health issues directly caused the misconduct set forth in this matter.

On August 7, 2007, the court lodged its Confidential Statement of Alternative Dispositions and Orders (Statement), setting forth the recommended discipline if respondent successfully completed or was terminated from the court's ADP. On that same day, respondent entered into a Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program; the parties' stipulation was lodged with the court; and respondent was accepted as a participant in the ADP.

On January 15, 2010, the LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program – Mental Health (certificate), setting forth that respondent has

complied with the requirements of the LAP Participation Agreement/Plan for one year prior to the date of this certificate, and that during this period, respondent has maintained mental health stability and has participated successfully in the LAP.

On January 20, 2010, the court found that respondent successfully completed the ADP and ordered the stipulation lodged August 7, 2007, to be filed on the same day. The court also indicated that it would issue this decision recommending to the Supreme Court the imposition of the lower level of discipline reflected in the Statement.

III. Findings of Fact and Conclusions of Law

The Stipulation Re Facts and Conclusions of Law (stipulation) approved by the court and filed on January 20, 2010, are incorporated by reference as if set forth fully herein. The stipulation sets forth the factual findings, conclusions of law and certain aggravating and mitigating circumstances in this matter.

Respondent was culpable of professional misconduct in three client matters, including failing to perform competently, failing to communicate, failing to promptly return client files, failing to provide an accounting, failing to maintain funds in a client trust account, committing an act of misappropriation with gross negligence and failing to cooperate with the State Bar.

At the time respondent engaged in the misconduct, respondent was suffering from mental health issues which directly caused the misconduct in this proceeding. Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that those emotional difficulties were directly responsible for the misconduct, provided that the attorney has also established, through clear and convincing evidence, that he or she no longer suffers from such difficulties. (*Porter v. State Bar* (1990) 52 Cal.3d 518, 527; *In re Naney* (1990) 51 Cal.3d 186; 197; *In re Lamb* (1989) 49 Cal.3d 239, 246; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.)

However, the Supreme Court has also held that, absent a finding of rehabilitation, emotional problems are not considered a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

Respondent has been participating in the LAP since 2006 and has successfully completed the ADP. Respondent had satisfied the financial condition by attending the State Bar's Client Trust Account School. He had also returned the client file pursuant to the stipulation. Respondent's successful completion of the ADP, as well as the certificate, qualify as clear and convincing evidence that respondent no longer suffers from the mental health issues which led to his misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a further mitigating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,² std. 1.2(e)(iv).)

IV. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, to preserve public confidence in the legal profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

After reviewing the parties' briefs on discipline and considering the standards and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law and aggravating and mitigating circumstances with respect to this disciplinary proceeding and respondent's declaration regarding the nexus between his mental health issues and his misconduct in this matter, the court advised the parties of the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and the discipline that would be recommended if respondent was terminated from the ADP.

² References to standard(s) or std. are to this source.

After agreeing to the recommended discipline, respondent executed the contract to participate in the ADP and was accepted for participation in the ADP.

Thereafter, respondent successfully participated in the ADP and, as set forth in the order filed on January 21, 2010, the court found that respondent successfully completed the ADP.

Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set forth in the Statement if respondent successfully completed the ADP.

V. Recommended Discipline

Therefore, the court recommends that respondent **Kenneth Sidney Kleeger** be suspended from the practice of law for one year, that execution of such suspension be stayed, and that respondent be placed on probation for a period of three years, on the following conditions:³

1. Respondent must be actually suspended from the practice of law for the first 60 days of his probation;
2. During the period of probation, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;
3. Within 10 days of any change in the information required to be maintained on the State Bar's membership records pursuant to Business and Professions Code section 6002.1, subdivision (a), including his current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report any such change in writing to the Membership Records Office of the State Bar and to the Office of Probation;
4. Unless respondent has successfully completed the Lawyer Assistance Program, respondent must comply with all provisions and conditions of his Participation

³ According to the Office of Probation, respondent had returned the client file to Richard Rangel and had attended the State Bar's Client Trust Account School.

Agreement with the LAP and must execute an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of his participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. If respondent has successfully completed the LAP, respondent must provide the Office of Probation with satisfactory certification of completion of the LAP;

5. Respondent must submit written quarterly probation reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions set forth in this Decision during the preceding calendar quarter. If the first report will cover less than 30 days, that report must be submitted on the reporting due date for the next calendar quarter and must cover the extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than 20 days before the last day of the probation and no later than the last day of said period;
6. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
7. Subject to the assertion of applicable privileges, respondent must answer fully, promptly,

and truthfully, any inquiries of the Office of Probation which are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with these probation conditions;

8. Within one year of the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent must provide to the Office of Probation satisfactory proof of his attendance at a session of State Bar Ethics School and of passage of the test given at the end of that session, unless he previously completed the course within the prior two years (Rules Proc. of State Bar, rule 290); and
9. These probation conditions will commence on the effective date of the Supreme Court's final disciplinary order in this proceeding.

It is also recommended that respondent take and pass the Multistate Professional Responsibility Examination within one year. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 951(b), and Rules Proc. of State Bar, rule 3201(a)(1) and (3).)

It is further recommended that respondent be ordered to reimburse the Client Security Fund to the extent that the misconduct found in this matter results in the payment of funds and that such payment be enforceable as provided for under Business and Professions Code section 6140.5.

Finally, it is recommended that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VI. Order Sealing Documents

The court orders this Order Sealing Documents be filed. Thereafter, pursuant to rule 806(c) of the Rules of Procedure, all other documents not previously filed in this matter will be sealed under rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their official duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

IT IS SO ORDERED.

Dated: April 8, 2010.

RICHARD A. PLATEL
Judge of the State Bar Court